

FILED-CLERK  
DISTRICT COURT  
COURT  
AS  
01 FEB -3 PM 4:09  
TEMPERATURE  
BY S. M. Mose

~~~~~

501 CV 030

## Defendants.

1.3 In or about February 1999, Ticketmaster began to offer consumers purchasing tickets to its clients' events at its Remote Ticket Outlets the opportunity to purchase tickets utilizing credit cards rather than only accepting cash payment at its Remote Ticket Outlets. In order to account for the added cost of the credit card charge and processing costs, Ticketmaster contends it raised the price of its service charge by 2.5% of the base amount of the tickets purchased. Ticketmaster contends it then offered consumers utilizing cash to pay for their tickets at Remote Ticket Outlets only the opportunity to not pay for the credit charge not utilized. Ticketmaster characterized its practice as a cash discount offered against the amount of its convenience charge in the amount of 2.5% of the total cost of the tickets (i.e., the cost charged for processing the relevant credit card).

1.4 On December 14, 1999, the Class Members filed a petition against Ticketmaster challenging certain business practices of Ticketmaster, including, among other things, Ticketmaster allegedly charging consumers purchasing tickets by credit at its Remote Ticket Outlets a higher convenience charge than when tickets were purchased with cash.

1.5 On June 20, 2000, Plaintiffs filed an amended petition alleging a national class of injured consumers on the grounds set forth in the original petition and on the additional grounds that the consumers were third-party beneficiaries with respect to Ticketmaster's credit card agreement. The Third Amended Petition charged that the difference in price between the service charges paid to Ticketmaster for tickets purchased over the telephone system and internet as opposed to tickets purchased at the Remote Ticket Outlets for cash also was a violation of the statutory scheme.

1.6 The asserted members of the class are a group of individuals and entities asserting certain claims against Ticketmaster in the Plaintiff's Original Complaint (the "Complaint") filed in the above-referenced matter. The Complaint herein seeks certification of a class.

1.7 The Class Representative has made allegations that Ticketmaster's business practices with respect to varying prices for ticket service charges at the Outlets based on cash and credit charges, constitute violations by Ticketmaster of TEX. FINANCE CODE § 339.001, CAL. CIVIL CODE § 1748.1(a), CONN. GEN. STAT. ANN. § 42-133ff, FLA. STAT. ANN. § 501.0117, KAN. STAT. ANN. 16a-2-403, MAINE REV. STAT. ANN. § 8-303, MINN. STAT. ANN. § 325G.051, MASS. GEN. LAWS ANN. § 28A(a)(2), NEW YORK ANN. GEN. BUS. LAW § 518, and OK. STAT. ANN. § 2-417. Further, the Class Representative alleges that Ticketmaster breached a Merchant Services Bankcard Agreement dated May 1998, by imposing a credit card surcharge upon consumers nationwide. The Class Representative also asserts that the practice of accepting cash discounts at the Outlets and not for Tickets purchased on the telephone and the Internet also violates these statutes and the Merchant Services Bankcard Agreement.

1.8 Ticketmaster strongly disputes the claims of the Class Representative. Ticketmaster contends that its business practices constitute the implementation of a legal cash discount program in full compliance with TEX. FINANCE CODE § 339.001, CAL. CIVIL CODE § 1748.1(a), CONN. GEN. STAT. ANN. § 42-133ff, FLA. STAT. ANN. § 501.0117, KAN. STAT. ANN. 16a-2-403, MAINE REV. STAT. ANN. § 8-303, MINN. STAT. ANN. § 325G.051, MASS. GEN. LAWS ANN. § 28A(a)(2), NEW YORK ANN. GEN. BUS. LAW § 518, and OK. STAT. ANN. § 2-417. Ticketmaster also asserts that its practices are in full accordance with the referenced—and any otherwise applicable—statutes, and are not a violation

or breach of any laws or regulations of any State or of the United States. Ticketmaster contends that its pricing practices of charging different prices for its service to enable ordering tickets over the national telephone services or via the world wide internet as opposed to traveling to the retail outlet claims is legal and permissible. Moreover, Ticketmaster contends that charging a slightly higher price for its convenience charge, in the amount of 2.5%, for tickets purchased at the Outlets with credit cards, and offering a cash discount program for tickets purchased with cash, is legal and permissible under each of the foregoing statutes, any other applicable statute, and under the Merchant Services Bankcard Agreement, as each is interpreted consistent with the applicable terms and definitions of the federal Truth-in-Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA").

1.9 Class Counsel (as defined below) have considerable experience litigating class action claims of the type involved in this Litigation (as defined below). Class Counsel have analyzed the facts and law relevant to this Litigation.

1.10 The relief provided by the Settlement Agreement and the procedures set forth in this Agreement for the distribution of this relief will provide a fair, flexible, speedy, and cost-effective resolution to the parties' disputes. Thus, the Settlement Agreement provides considerable benefit on behalf of the Class Members, while avoiding costly litigation of difficult and contentious legal and factual issues.

1.11 Based on Class Counsel's extensive analysis of the law and facts at issue in this Litigation, and the fair, flexible, speedy, cost-effective, and assured procedures for providing relief on behalf of the Class Members, the Class Representative, on advice of Class Counsel, has determined that this settlement with Ticketmaster on the terms set forth below would be fair, adequate, and reasonable, and, thus, in the best interests of the Class Members.

1.12 Based on Class Counsel's extensive analysis of the law and facts at issue in this Litigation, and the fair, flexible, speedy, cost-effective, and assured procedures for providing relief on behalf of the Class Members, Class Counsel has determined that this settlement with Ticketmaster Corporation on the terms set forth below would be fair, adequate, and reasonable, and, thus, in the best interests of the Class Members.

1.13 Based on an extensive analysis of the law and facts at issue in this Litigation, and the fair, flexible, speedy, cost-effective, and assured procedures set forth for providing relief on behalf of the Class Members, Ticketmaster Corporation, on advice of counsel, has determined that this settlement with the Class Members on the terms set forth below would be fair, adequate, and reasonable. Ticketmaster Corporation is entering into this Settlement Agreement to avoid the risks inherent in uncertain complex litigation and to avoid the further potential substantial expense, inconvenience, and burden of this protracted litigation, as well as the distraction and diversion of its personnel and resources. Class Representative and its counsel and Ticketmaster Corporation agree that this Settlement Agreement is not intended, and shall not be deemed, construed or utilized by any party to be an admission or evidence of any violation of any statute or law or of any fault, liability or wrongdoing by Ticketmaster or of the truth of any of the claims or allegations alleged in the Litigation. Ticketmaster Corporation also is entering into this Agreement in reliance upon and in consideration of the Court's approval of the revised and amended Business Practices Regarding Cash Discounts, which provide for additional disclosures to consumers, and which provide that Ticketmaster may properly offer consumers a discount for cash applied against its Convenience Charge for Tickets purchased at its Remote Ticket Outlets.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the settling Parties, the parties agree as follows:

## **II. DEFINITIONS**

The following terms, when used in this Settlement Agreement, shall have the respective meanings stated:

2.1 "AGREEMENT" or "SETTLEMENT AGREEMENT" means this Settlement Agreement.

2.2 "BUSINESS PRACTICES REGARDING CASH DISCOUNTS" means Ticketmaster's modified and amended procedures for providing or offering cash discounts to consumers purchasing Tickets to its clients' events at its Remote Ticket Outlets against the total amount of its applicable convenience charges for certain tickets paid for utilizing cash rather than credit cards, as set forth in more detail in the attached Exhibit A.

2.3 "CLASS" means the class certified for purposes only of this Agreement, composed of all Class Members.

2.4 "CLASS COUNSEL" means Michael W. Shore and Joel M. Fineberg of SHORE FINEBERG, L.L.P.; Francisco J. Enriquez and Rolando Cantu of Enriquez & Cantu, L.L.P.; and Roger L. Mandel and Marc R. Stanley of Stanley, Mandel & Iola, L.L.P.

2.5 "CLASS MEMBERS" means all persons who purchased a Ticket from Ticketmaster, either at its Remote Ticket Outlets, over the Internet or via telephone, using a credit card as the method of payment, during the following periods of time:

- (1) As to those who purchased a Ticket(s) at a Point of Sale within the States of Texas, California and Florida—12/14/95 through 12/30/00.
- (2) As to those who purchased a Ticket(s) at a Point of Sale within the State of Oklahoma—12/14/94 through 12/30/00.

- (3) As to those who purchased a Ticket(s) at a Point of Sale within the States of Kansas and Colorado—12/14/96 through 12/30/00.
- (4) As to those who purchased a Ticket(s) at a Point of Sale within the States of New York, Connecticut, Maine and Massachusetts—12/14/93 through 12/30/00.
- (5) As to those who purchased a Ticket(s) at a Point of Sale in any of the other States within the United States of America—12/14/93 through 12/30/00.

Notwithstanding the foregoing, a person is not a Class Member if such person submits a duly executed notice of exclusion as provided in this Agreement during the Opt-Out Period.

2.6 “CLASS NOTICE” means the initial form of Court-approved notice, in a form substantially similar to that attached hereto as Exhibit B. As described more fully below in ¶ V, the CLASS NOTICE will consist of written notice published to Class Members through newspaper advertisements.

2.7 “CLASS PERIOD” means the time periods, for each State, referenced in ¶ 2.5.

2.8 “CLASS REPRESENTATIVE” means Adriana Garza.

2.9 “CONVENIENCE CHARGE OR SERVICE CHARGE” means the amount charged to a Ticket purchaser by Ticketmaster or Ticketmaster’s client for use of the TM System, which is paid by Ticket purchasers for the convenience and service of purchasing Tickets sold by Ticketmaster as agent for its clients, through the internet, telephones, at Remote Ticket Outlets, and through other similar means.

2.10 “COURT” means the United States District Court for the Eastern District of Texas, Texarkana Division.

2.11 “CY-PRES AWARD” means a total award of \$6,000,000 payable by Ticketmaster Corporation as set forth herein plus Ticketmaster’s agreement to amend and modify its business practices as set forth in Section 2.2 hereof. Ticketmaster Corporation shall provide

the Cy-Pres Award by donating, contributing, or causing its clients to donate or contribute Tickets and applicable Convenience Charges (valued at the stated face amount, or allocated amount, including any and all Convenience Charges otherwise charged for each particular event plus all applicable taxes) to individuals or a charitable foundation or organization controlled by Ticketmaster Corporation for purposes of a Ticket donation/utilization program, as set forth in Section III below.

2.12 "EFFECTIVE DATE" means the date by which a Final Judgment and Order of Dismissal approving this Settlement Agreement becomes final and non-appealable.

2.13 "EVENT" means any single sporting event or other entertainment feature to be held at any facility, venue, stadium or other similar arena in respect of which Ticketmaster has authority to sell tickets to the public.

2.14 "FAIRNESS HEARING" means the hearing to be conducted by the Court under FED. R. CIV. P. 23 to consider the fairness, adequacy, and reasonableness of this Agreement.

2.15 "FINAL JUDGMENT AND ORDER OF DISMISSAL" means the final order and judgment to be entered by the Court, in substantially the form attached hereto as Exhibit C; approving this Agreement as fair, adequate, and reasonable under FED. R. CIV. P. 23(e). The Final Judgment and Order of Dismissal shall, among other things, confirm certification of the Class, provide for the Court to retain jurisdiction to enforce its Final Judgment and Order of Dismissal and adjudicate any controversies arising thereunder, approve Ticketmaster's revised Business Practices Regarding Cash Discounts, and enjoin any actions by any Person, including, but not limited to, future litigation by the Class Members regarding the subject matter hereof or arising under or in connection with the approved Business Practices Regarding Cash Discounts,



and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

2.16 "LITIGATION" means Adriana Garza, Individually and on Behalf of all others similarly situated v. Ticketmaster L.L.C., Ticketmaster Group, Inc., and Ticketmaster Online - City Search, Inc., to be filed in the United States District Court for the Eastern District of Texas, Texarkana Division.

2.17 "NOTICE DATE" means the date that is ten (10) Business Days after the Preliminary Approval Date, by which date Class Notice is to be initiated by placing such advertisements as may be required hereunder under Section V of this Agreement.

2.18 "OPT-OUT PERIOD" means the period commencing on the Preliminary Approval Date and continuing for the Court-prescribed number of days from the Notice Date.

2.19 "PARTIES" when used in reference to this Settlement Agreement means the Class Representative, Class Members, Class Counsel, and Ticketmaster Corporation.

2.20 "POINT OF SALE" refers to (1) the physical location of a Remote Ticket Outlet, or (2) the physical location of a Class Member at the time the Class Member made a purchase of a Ticket from Ticketmaster either over the telephone, the Internet or other similar means.

2.21 "PRELIMINARY APPROVAL DATE" means the date that the Court enters an Order granting the Parties' Joint Motion for Preliminary Approval of the Proposed Class Settlement and Approval of Notice to the Class Members, in a form substantially similar to that attached as Exhibit E.

2.22 "RELEASED CLAIMS" means any and all actual or alleged, present or future, known or unknown rights by any or all Class Members to all legal or equitable remedies, at law or otherwise, including, but not limited to, any compensation, injunction, recovery, or any other

remedy premised on any and all present or future theories of recovery of whatsoever nature against Ticketmaster, whether presently asserted or not, to the extent that any of the foregoing theories of recovery directly or indirectly arise from or are in connection with any alleged difference in the price paid for Tickets or the amounts of the Convenience Charges of Ticketmaster and/or its clients at any Point of Sale based upon the method of payment. These claims include, but are not limited to, any alleged violations of TEX. FINANCE CODE § 339.001(a), CAL. CIVIL CODE § 1748.1(a), CONN. GEN. STAT. ANN. § 42-133ff, FLA. STAT. ANN. § 501.0117, KAN. STAT. ANN. 16a-2-403, MAINE REV. STAT. ANN. § 8-303, MINN. STAT. ANN. § 325G.051, MASS. GEN. LAWS ANN. § 28A(a)(2), NEW YORK ANN. GEN. BUS. LAW § 518, OK. STAT. ANN. § 2-417, or any other similar state statutes of any another State of the United States of America including TILA as same may from time to time be amended. Further, Class Members release all claims for breach of contract as third party beneficiaries to the Merchant Services Bankcard Agreement. In addition, Class Members release all claims arising out of or related to Ticketmaster's Business Practices Regarding Cash Discounts. Such theories of recovery comprehensively include, but are not limited to, all causes of action, demands, liability, suits, and judgments, whether arising in equity or under common law or contract or any statute, regulation, or otherwise that have accrued or may ever accrue for any and all damages, multiple damages, penalties, or relief whether known or unknown.

2.23 "REMOTE TICKET OUTLET" or "OUTLET" means any retail ticket selling agency outlets (including but not limited to The May Department Stores Company) where Tickets for events are made available through the TM System and are offered for sale to the public, other than any facility's or Ticketmaster client's box office.

2.24 "TICKET" refers to a printed, electronic or any other similar evidence of license or right to occupy space at or to attend an event, and allowing the bearer to enter certain events including, but not limited to: concerts, sporting, entertainment.

2.25 "TICKETMASTER" collectively refers to Southwest Ticketing, Inc., d/b/a Ticketron, Ticketmaster and Rainbow Ticketmaster; Ticketmaster L.L.C.; Ticketmaster Group, Inc.; Ticketmaster Online - City Search, Inc.; Ticketmaster Corporation; and The May Department Stores Company, as well as to any agents, employees, attorneys, officers, directors, partners, parents, subsidiaries or other affiliated companies, successors or assigns including, but not limited to, any Remote Ticket Outlet.

2.26 "Ticketmaster Corporation" refers to Ticketmaster Corporation, an Illinois Corporation, which is a signatory to this Settlement Agreement, and its agents, employees, attorneys, officers, directors, partners, parents, subsidiaries, affiliates, successors and assigns.

2.27 "TM SYSTEM" refers to the hardware, software, related procedures and personnel, and repair and maintenance services established and maintained by Ticketmaster and its affiliates for the purpose of selling, auditing and controlling the sale of Tickets for attractions including, but not limited to, at Remote Ticket Outlets and through telephone sales.

### **III. CLASS RELIEF VIA CY-PRES AWARD**

3.1 Ticketmaster Corporation agrees to provide relief on behalf of the Class in the form of the payment and execution of the Cy- Pres Award. This ticket donation program will take place over the course of six years beginning on the Effective Date.

3.2 In accordance with the Cy-Pres Award, during this six-year period, Ticketmaster Corporation will donate or cause to be donated Tickets valued at (using the total of the face value plus any otherwise applicable Convenience Charges) \$6,000,000, it being the understanding of the Settling Parties that the full amount of the Cy-Pres Award will not exceed this total of

\$6,000,000. Ticketmaster Corporation will be entitled to a full credit against the total \$6,000,000 obligation, in the amounts of (a) \$150,000 annually to be a credit against a portion of Ticketmaster Corporation's total expenses in administering the donation program, and (b) \$50,000 annually, representing Ticketmaster Corporation's payments set forth in ¶ IX hereafter, which attorney's fees and expenses of the Class Representative's counsel are intended to compensate Class Representative's Counsel for their time incurred during the six year period of the Cy-Pres Award in connection with consulting with Ticketmaster Corporation regarding the ticket donation program. Ticketmaster Corporation will undertake to make its contributions to the ticket donation program in roughly equal installments, and it may credit all Tickets and related Convenience Charges donated or caused to be donated from the date of execution of this Agreement.

3.3 Ticketmaster Corporation shall consult with Class Counsel regarding the administration of the ticket donation program. Additionally, Ticketmaster Corporation shall provide the Court and Class Counsel with a report within 90 days of January 1 of each successive year setting forth in general and confirming Ticketmaster Corporation's compliance with its obligations hereunder.

#### **IV. IDENTIFICATION OF CLASS MEMBERS**

4.1 The Parties acknowledge and agree that Ticketmaster has made extensive and reasonable efforts to determine its ability to identify all or substantially all of the Class Members. The Parties have determined to enter into an agreement providing for a Cy-Pres Award, in part, because the Parties acknowledge and agree that Ticketmaster does not possess or have legal access to sufficient information as to the identities and current addresses of the Class Members who purchased Tickets at Outlets nor does Ticketmaster have ready access or legally permissible access to other sources of this information. Moreover, individual notice to all Class Members

who purchased Tickets over the telephones or the Internet is not feasible or reasonable given the number of potential Class Members, the time period involved, and the potential cost of such notice. Individual notice to Class Members, therefore, is not possible or reasonable. In addition, the Parties cannot readily verify the consumers entitled to relief. Accordingly, the Parties have agreed to the Cy-Pres Award, including its provisions regarding amended business practices, for the public benefit, and notice by publication is contemplated pursuant to ¶ V below.

## **V. CLASS NOTICE**

5.1 Ticketmaster will disseminate the Class Notice to the Class Members via publication in USA Today on at least three (3) separate dates beginning with the Notice Date. The Class Notice, to be published substantially in the form attached hereto as Exhibit B, shall in general describe: (1) the Litigation, (2) the terms of this Agreement, (3) Class Counsel's attorneys' fees and expenses, (4) the Class Representative's incentive award, (5) Class Members' right to object to or opt out of the Settlement, (6) Class Members' right to appear in support of, or in objection to, this proposed Agreement at the Fairness Hearing, (7) shall set forth that Ticketmaster may continue its Business Practices Regarding Cash Discounts and that such practices, if followed, are legal and appropriate and for the benefit of the public, and (8) shall provide an address to which Class Members may go to request additional information regarding this Agreement, including a copy of this Agreement.

5.2 Ticketmaster Corporation agrees that it will be responsible for all costs of the Class Notice up to the sum of \$75,000. To the extent that the costs of Class Notice exceed this sum, Ticketmaster Corporation shall be entitled to a full credit of any such cost against the Cy-Pres Award for all such additional costs, provided that costs of any notice prescribed by the Court shall not exceed \$200,000, in which case this Settlement Agreement, at the sole option of Ticketmaster Corporation, may be declared null and void.

## **VI. SETTLEMENT APPROVAL**

6.1 This Settlement Agreement shall be deemed to be finally approved and effective on the Effective Date.

6.2 This Agreement is contingent upon each of the following:

- Certification by the Court of the Class as defined in this Agreement;
- Preliminary approval by the Court of this Agreement, including the proposed method of providing notice by publication;
- No more than 1,000 Class Members electing to opt out of the Class;
- Approval by the Court of Ticketmaster's revised Business Practices Regarding Cash Discounts;
- Awarding by the Court of attorneys' fees and expenses to Class Counsel in an amount not to exceed that set forth in ¶ 9.2 below.
- Final approval by the Court of all material terms of this Agreement and the entry of a Final Judgment and Order of Dismissal substantially in the form attached hereto;
- Approval of the actions of the Court by any reviewing appellate court, if any appeal is taken.

6.3 If any of the contingencies in ¶ 6.2 do not occur, either Class Representative or Ticketmaster Corporation shall have the right, in its sole and absolute discretion, to withdraw from and terminate this Agreement upon providing written notice to the other within twenty (20) days of the event causing the right of withdrawal to occur. The effect of withdrawal or termination by either the Class Representative or Ticketmaster Corporation shall be: (1) the obligations of this Agreement shall be nullified and void, and the Parties will be restored to status quo ante; and (2) all agreements made by and between Class Members, whether through Class Counsel or otherwise, and Ticketmaster Corporation, whether through Ticketmaster Corporation's counsel or otherwise, contained in this Agreement shall be canceled.

## **VII. CLASS MEMBERS' RELEASE AND EXCLUSIVE REMEDY**

7.1 Upon entry of the Final Order and Judgment, each Class Member and the Class Representative, on behalf of himself and any person claiming by or through him as heir, administrator, devisee, predecessor, successor, representative of any kind, or assignee, shall be deemed to and does hereby release and forever discharge Ticketmaster, including its successors, parents, subsidiaries, divisions, affiliates, present and future officers, directors, agents, employees, and attorneys from any and all of the Released Claims and shall release any and all other defendants in the Litigation with prejudice.

7.2 Payment and performance of the Cy-Pres Award as described in this Settlement Agreement is the EXCLUSIVE method of recovery and remedy of all Class Members for any and all of the Released Claims. Acceptance of the Cy-Pres Award under this Agreement shall be in lieu of any other remedy or right of action against Ticketmaster for the Released Claims. Accordingly, Ticketmaster shall not be subject to liability or expense of any kind to any Class Member with respect to any action for Released Claims, any action based on the conduct underlying the Released Claims or any action in connection with Ticketmaster's Business Practices Regarding Cash Discounts, other than as set forth in this Agreement.

7.3 Each Class Member, and all other similarly situated consumers who purchase Tickets at a Point of Sale, upon the Court's entry of a Final Judgment and Order of Dismissal, shall be enjoined by that Judgment from instituting or maintaining in the future any action for Released Claims, any action based on the conduct underlying the Released Claims or any action based on any conduct in connection with Ticketmaster's Business Practices Regarding Cash Discounts which are for the public benefit and are a part of the Cy-Pres Award. The Court shall retain exclusive jurisdiction over this Litigation, and over the enforcement of this Agreement and performance of the Cy-Pres Award, and may use its equitable powers to enforce this Agreement.

7.4 Class Representative, and each Class Member, and Ticketmaster hereby expressly waive any rights or benefits available under the provisions of Section 1542 of the California Civil Code which is quoted as follows:

Section 1542. Certain Claims Not Affected By General Release.  
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Class Representative, each Class Member and Ticketmaster does understand and will be deemed to understand the statutory language of Section 1542 of the California Civil Code. Nevertheless, Class Representative and Ticketmaster elect to and hereby do release the Released Persons and each of them from all claims they may have, whether known or unknown, arising from the subject matter of this Agreement, and specifically waive any rights which they may have under said Civil Code Section.

#### **VIII. CLASS COUNSEL'S REPRESENTATIONS AND WARRANTIES**

8.1 Class Counsel represent and warrant as follows:

A. that this Agreement pertains to all persons or entities they now represent with claims either directly or indirectly related to persons who paid Ticketmaster for Tickets with credit cards;

A. that all persons or entities having claims against Ticketmaster either directly or indirectly related to the use of credit cards who are directly represented by Class Counsel are currently or will be named as parties to the litigation or are Class Members;

B. that the consideration paid by Ticketmaster Corporation under this Agreement is paid in full satisfaction of all Ticketmaster's liability for all Released Claims of all Class Members.

D. that Counsel shall use its reasonable best efforts to obtain orders referenced above by presenting this Settlement Agreement to the Court as soon as possible.



If the Court does not enter any of the orders referred to herein or if any order is entered by the Court but is reversed or modified in any way by the Court of Appeals or by the United States Supreme Court, then this Settlement Agreement shall automatically become null and void. It is agreed that the provisions of Rule 60, Fed. R. Civ. P., shall not be taken into account in determining when the orders referred to become final and unappealable.

#### **IX. CLASS COUNSEL'S ATTORNEYS' FEES AND EXPENSES**

9.1 The Parties agreed to all substantive terms of this Settlement Agreement prior to reaching any agreement concerning attorneys' fees.

9.2 Ticketmaster Corporation agrees to pay the Plaintiff's attorneys' fees and expenses to be determined by the Court. Class Counsel agrees to seek Court approval of no more than \$2,200,000 in attorneys' fees and expenses. If the Court approves an award of this sum, the parties acknowledge that it will be paid by Ticketmaster Corporation as follows: \$1,900,000 payable within three Business Days after the Effective Date and the remainder to be paid in six annual payments of \$50,000 each payable on or before the one year anniversary of the previous payment, with the first payment due within one year of the Effective Date. Ticketmaster Corporation shall make the check payable to Shore Fineberg, L.L.P. Trust Account (Tax ID # 75-2485082), as agent for Plaintiff's counsel. Ticketmaster Corporation agrees not to oppose or object to any award of attorneys' fees and expenses up to this amount and subject to these payment terms. The attorneys' fees were calculated by taking into account the amount and nature of relief afforded on behalf of the Class Members by virtue of this Agreement.

#### **X. INDIVIDUAL CLASS MEMBERS' ATTORNEYS' FEES**

10.1 Any Class Member or other Ticketmaster customer may be represented by counsel of his or her choice, but all fees and expenses of such counsel, if other than Class Counsel paid under ¶ 9.2 hereof, shall be paid by the Class Member or customer.

## **XI. CLASS REPRESENTATIVE PAYMENT**

11.1 The Class Representative shall be entitled to an incentive award of \$5,000.00 paid by Ticketmaster Corporation for her service as Class Representative. Class Counsel shall file a motion with the Court on behalf of the Class Representative seeking such award, and the Class Representative agrees to seek an award of \$5,000.00. Ticketmaster Corporation agrees not to oppose such motion, so long as the Class Representative does not seek more than \$5,000.00, Ticketmaster Corporation shall pay such award within three Business Days after the Effective Date.

## **XII. OBJECTION PERIOD FOR CLASS MEMBERS**

12.1 All Class Members who wish to object to one or more terms of this Agreement, to Class Counsel's attorneys' fees and expenses, to the Class Representative's incentive award, or to the Order Granting Joint Motion for Preliminary Approval of the Proposed Settlement and Approval of Notice to Class Members shall notify the Court, Class Counsel, and counsel for Ticketmaster in writing of such intent. Such written notice of objection must include:

- (1) A statement of each objection asserted;
- (2) A detailed description of the facts underlying each objection;
- (3) A detailed description of the legal authorities underlying each objection;
- (4) A statement of whether the objector attends to appear and argue at the Fairness Hearing;
- (5) A list of witnesses whom the objector may call by live testimony, oral deposition testimony or affidavit during the Fairness Hearing; and
- (6) A list of the exhibits which the objector may offer during the Fairness Hearing, along with copies of all such exhibits.

12.2 Objecting Class Members must file such notice of objection with the Court and deliver such notice of objection to both Class Counsel and counsel for Ticketmaster at the addresses set forth in ¶ 13.5 by a date set by the Court, proposed herein to be no later than forty-

four (44) days from the Notice Date. Class Members who fail to timely file with the Court objections substantially in compliance with ¶ 12.1 or to timely deliver them to Class Counsel and counsel for Ticketmaster shall not be heard during the Fairness Hearing; nor shall their objections be considered by the Court. Such objectors shall, however, remain fully entitled to opt-out of the Class through the date of the Fairness Hearing.

### **XIII. MISCELLANEOUS PROVISIONS**

13.1 The Parties agree that this Agreement is a compromise of disputed claims, and that this Agreement is entered into without admitting any liability, which liability is expressly denied, and without agreement by any Party to any of the allegations made by another Party. Nothing contained in this Agreement, the supporting documents, or the negotiations leading up to this Agreement shall be construed as an admission of liability or wrongdoing of any kind, or -- in the event that this Agreement is terminated -- as a waiver of any defenses that Ticketmaster may have in the Litigation.

13.2 All signatories to this Agreement and their counsel shall exercise their reasonable best efforts to take all steps and expend all efforts that may become necessary to effectuate this Agreement. The Class Representative and Ticketmaster will file the Joint Motion for Preliminary Approval of the Proposed Settlement and Approval of Notice to Class Members along with a draft Order in substantially the forms attached hereto as Exhibits D and E.

13.3 This Agreement, including all referenced Exhibits, is the entire agreement of the Parties. All antecedent or contemporaneous extrinsic representations, warranties, or collateral provisions concerning the negotiation and preparation of this Agreement are intended to be discharged and nullified.

13.4 No modification of this Agreement may be made, except by written agreement of Class Representative, Class Counsel and Ticketmaster Corporation.

13.5 All notices between Class Representative, Class Counsel, Ticketmaster Corporation, and counsel for Ticketmaster Corporation required under this Agreement shall be sent by first class U.S. mail, by hand delivery, or by facsimile, to the recipient designated in this Agreement. The timeliness of all submissions and notices shall be measured by the date that is three days after the date of postmark (if sent by mail), or by the date of receipt (if hand delivered or faxed). The persons designated to receive notice are as follows:

William T. Hankinson  
James M. Underwood  
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201

ATTORNEYS FOR TICKETMASTER CORPORATION

with a required copy to  
Ticketmaster Corporation  
Attention: Daniel R. Goodman, Esq.  
3701 Wilshire Blvd.  
9<sup>th</sup> Floor  
Los Angeles, CA 90010

And :

Michael W. Shore or  
Joel M. Fineberg  
Shore ♦ Fineberg, L.L.P.  
4600 Greenville Avenue  
Dallas, Texas 75206  
(214) 360-9622  
(214) 739-3879 (fax)

Francisco J. Enriquez or  
Rolando Cantu  
Enriquez & Cantu, L.L.P.  
4200-B North Bicentennial  
McAllen, Texas 78504  
(956) 686-5291  
(956) 687-6125 (fax)

Roger L. Mandel

Marc R. Stanley  
STANLEY, MANDEL & IOLA, L.L.P.  
3100 Monticello Avenue, Suite 750  
Dallas Texas 75206  
(214) 443-0358 (Fax)

CLASS COUNSEL

13.6 Class Representative and Ticketmaster Corporation and each of them represent that each has been fully informed, either through legal counsel, experts, or other sources of his own selection, so as to exercise his judgment intelligently in deciding to execute this Settlement Agreement and that Class Representative's decision is not predicated on or influenced by any declarations or representations of any other party. Class Representative and Ticketmaster Corporation declare that this Settlement Agreement is executed voluntarily with full knowledge of its significance and legal effects.

13.7 The obligations and benefits of this Settlement Agreement shall bind and inure to the benefit of all parents, subsidiaries, affiliates, officers, employees, directors, predecessors, successors, assigns or heirs of each party to the Settlement Agreement and this Agreement may be assigned to any Affiliate of Ticketmaster Corporation without any consent.

13.8 Class Representative and Ticketmaster Corporation agree that the Court shall retain jurisdiction to enforce this Settlement Agreement and that any Protective Order in the pending litigation shall continue in effect. Class Representative, Class Counsel and Ticketmaster Corporation further agree that if any party breaches this Settlement Agreement, the breaching party shall be liable for and shall indemnify the other party for all costs, expenses, liabilities and fees, including reasonable attorneys' fees, that may be incurred as a result of such breach, if such breach is not cured within thirty days of receipt of written notice of such breach, in addition to such other remedies that may be available at law or in equity.

13.9 If Class Representative and/or Class Counsel believe that Ticketmaster Corporation is in breach of this Settlement Agreement or any provision hereof, then Class Representative and/or Class Counsel, as applicable, shall deliver written notice of such alleged breach to Ticketmaster Corporation at the address set forth in ¶13.5 above and Ticketmaster Corporation shall have a period of 30 days after actual receipt of such notice to cure the alleged breach, and under no circumstances shall Ticketmaster Corporation be deemed to be in breach of this Settlement Agreement prior to completion of said 30-day period.

13.10 Class Representative and Ticketmaster Corporation represent and warrant that each of them has not assigned, sold, or otherwise transferred any of their rights released herein.

13.11 This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of Texas except for any conflict of law provisions in said laws of the State of Texas that might otherwise require the application of the laws of a jurisdiction other than that of the State of Texas to the performance, validity, construction, or enforcement of this Agreement.

13.12 This Agreement may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same Agreement.

Dated this 5 day of Jan, 2000.

Adriana Garza  
Adriana Garza, Class Representative

Dated this 9 day of Jan, 2000.

SHORE • FINEBERG, L.L.P.

By: Joe De la Cruz

Dated this 9 day of Jan, 2000.

ENRIQUEZ & CANTU, L.L.P.

By: Fernando J. Enriquez

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

STANLEY, MANDEL & IOIA, L.L.P.

By: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

TICKETMASTER CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Adriana Garza, Class Representative

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

SHORE ♦ FINEBERG, L.L.P.

By: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

ENRIQUEZ & CANTU, L.L.P.

By: \_\_\_\_\_

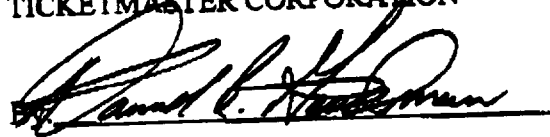
Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

STANLEY, MANDEL & IOLA, L.L.P.

By: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

TICKETMASTER CORPORATION

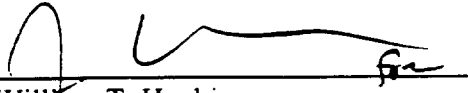
  
\_\_\_\_\_

Its: \_\_\_\_\_



Dated this 22 day of December, 1999.

AKIN, GUMP, STRAUSS, HAUER & FELD.  
L.L.P.

By:   
William T. Hankinson  
Counsel for Ticketmaster Corporation

